

Senate File 2271 - Introduced

SENATE FILE 2271
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 3021)

A BILL FOR

1 An Act relating to the licensure of ambulatory surgical
2 centers, providing fees and penalties, and including
3 effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135P.1 **Definitions.**

2 1. "*Ambulatory surgical center*" means a facility which as
3 its primary function provides, through an organized medical
4 staff and on an outpatient basis to patients who are generally
5 ambulatory, surgical procedures not ordinarily performed in a
6 private physician's office, but not requiring twenty-four-hour
7 hospitalization, and which is neither a part of a hospital nor
8 the private office of a health care provider who there engages
9 in the lawful practice of surgery. "*Ambulatory surgical center*"
10 includes a facility certified or seeking certification as an
11 ambulatory surgical center under the federal Medicare program
12 or under the medical assistance program established pursuant to
13 chapter 249A. "*Ambulatory surgical center*" does not include a
14 facility operated by a person licensed to practice dentistry
15 pursuant to chapter 153.

16 2. "*Department*" means the department of inspections and
17 appeals.

18 3. "*Governmental unit*" means the state, or any county,
19 municipality, or other political subdivision, or any
20 department, division, board, or other agency of any of the
21 foregoing.

22 Sec. 2. NEW SECTION. 135P.2 **Purpose.**

23 The purpose of this chapter is to protect the public
24 health, safety, and welfare by providing for the development,
25 establishment, and enforcement of basic standards for the
26 operation, construction, and maintenance of ambulatory surgical
27 centers.

28 Sec. 3. NEW SECTION. 135P.3 **Licensure.**

29 No person or governmental unit, acting severally or jointly
30 with any other person or governmental unit, shall establish,
31 operate, or maintain an ambulatory surgical center in this
32 state without obtaining a license as provided under this
33 chapter.

34 Sec. 4. NEW SECTION. 135P.4 **Application for license — fee.**

35 An ambulatory surgical center license shall be obtained from

1 the department. Applications for a license shall be upon such
2 forms and shall include such information as the department may
3 reasonably require, which may include affirmative evidence
4 of compliance with this chapter, other statutes, and rules
5 as may be applicable. Each application for license shall be
6 accompanied by the required license fee which shall be credited
7 to the general fund of the state. The initial and annual
8 license fee shall be five hundred dollars.

9 **Sec. 5. NEW SECTION. 135P.5 Issuance and renewal of**
10 **license.**

11 1. Upon receipt of an application for license and the
12 license fee, the department shall issue a license if the
13 applicant and the ambulatory surgical center comply with this
14 chapter and the rules of the department. The department shall
15 renew a license upon payment of the five hundred dollar annual
16 license fee and filing of an application form available from
17 the department.

18 2. A license shall be either general or restricted in form.
19 A license shall be issued only for the premises and persons
20 or governmental units named in the application and is not
21 transferable or assignable except with the written approval of
22 the department. A license shall be posted in a conspicuous
23 place on the licensed premises as prescribed by rule of the
24 department.

25 **Sec. 6. NEW SECTION. 135P.6 Denial, suspension, or**
26 **revocation of license — hearings and review.**

27 1. The department may deny, suspend, or revoke a license
28 in any case where it finds that there has been a substantial
29 failure to comply with this chapter or the rules or minimum
30 standards adopted pursuant to this chapter.

31 2. The procedure governing notice and hearing to deny
32 an application or suspend or revoke a license shall be in
33 accordance with the rules adopted by the department. A full
34 and complete record shall be kept of the proceedings and of
35 any testimony. The record of any proceeding pursuant to this

1 section need not be transcribed unless judicial review is
2 sought. A copy or copies of the transcript may be obtained by
3 an interested party on payment of the cost of preparing the
4 copy or copies.

5 Sec. 7. NEW SECTION. 135P.7 Rules.

6 1. The department shall adopt rules setting out the
7 standards for ambulatory surgical centers to be licensed under
8 this chapter. The rules shall be consistent with and not
9 exceed the requirements of this chapter and the conditions
10 for coverage in the federal Medicare program for ambulatory
11 surgical centers under 42 C.F.R. pt. 416.

12 2. The department shall adopt rules to govern the notice
13 and hearing procedure when a license is denied, suspended, or
14 revoked.

15 3. The rules shall require ambulatory surgical centers
16 to report ambulatory data to the department of public health
17 or the designated intermediary for the purpose of public
18 dissemination of health data as initially authorized in 1996
19 Iowa Acts, chapter 1212, section 5, subsection 1, paragraph "a",
20 subparagraph (4).

21 4. An ambulatory surgical center which is in operation at
22 the time of promulgation of any applicable rules or minimum
23 standards under this chapter shall be given a reasonable time,
24 not to exceed one year from the date of promulgation, within
25 which to comply with such rules and minimum standards.

26 5. The department shall enforce the rules.

27 Sec. 8. NEW SECTION. 135P.8 Inspections.

28 1. The department shall make or cause to be made inspections
29 or complaint investigations of ambulatory surgical centers as
30 the department deems necessary in order to determine compliance
31 with this chapter and applicable rules.

32 2. The department shall recognize, in lieu of its own
33 licensure inspection, the comparable inspection and inspection
34 findings of a Medicare conditions for coverage survey.

35 3. A department inspector shall not participate in an

1 inspection or complaint investigation of an ambulatory surgical
2 center in which the inspector or a member of the inspector's
3 immediate family works or has worked within the last two years
4 or in which the inspector or the inspector's immediate family
5 has a financial ownership interest. For the purposes of this
6 section, "*immediate family member*" means a spouse, natural or
7 adoptive parent or grandparent, child, grandchild, sibling,
8 stepparent, stepchild, or stepsibling.

9 Sec. 9. NEW SECTION. 135P.9 **Employee background checks.**

10 1. An ambulatory surgical center shall comply with child or
11 dependent adult abuse information and criminal record checks
12 and evaluations in the same manner as provided in section
13 135B.34.

14 2. An ambulatory surgical center licensed in this state
15 may access the single contact repository established by the
16 department pursuant to section 135C.33 as necessary for the
17 ambulatory surgical center to perform record checks of persons
18 employed or being considered for employment by the ambulatory
19 surgical center.

20 Sec. 10. NEW SECTION. 135P.10 **Confidentiality.**

21 The department's final inspection or investigation findings
22 or the final survey findings of an accrediting body, authorized
23 by the department in rule, with respect to compliance by an
24 ambulatory surgical center with requirements for licensing
25 or accreditation shall be made available to the public in a
26 readily available form and place. Other information relating
27 to an ambulatory surgical center obtained by the department
28 which does not constitute the department's findings from an
29 inspection or investigation of the ambulatory surgical center
30 or the final survey findings of the accrediting body shall
31 not be made available to the public, except in proceedings
32 involving the denial, suspension, or revocation of a license
33 under this chapter. The name of a person who files a complaint
34 with the department shall remain confidential and shall not
35 be subject to discovery, subpoena, or other means of legal

1 compulsion for its release to a person other than department
2 employees or agents involved in the investigation of the
3 complaint.

4 Sec. 11. NEW SECTION. 135P.11 **Judicial review.**

5 Judicial review of an action of the department may be sought
6 in accordance with chapter 17A. Notwithstanding the provisions
7 of chapter 17A, petitions for judicial review may be filed
8 in the district court of the county in which the ambulatory
9 surgical center is located or to be located and the status quo
10 of the petitioner or licensee shall be preserved pending final
11 disposition of the judicial review matter.

12 Sec. 12. NEW SECTION. 135P.12 **Penalty.**

13 Any person establishing, conducting, managing, or operating
14 any ambulatory surgical center without a license commits a
15 serious misdemeanor, and each day of continuing violation after
16 conviction shall be considered a separate offense.

17 Sec. 13. NEW SECTION. 135P.13 **Injunction.**

18 Notwithstanding the existence or pursuit of any other
19 remedy, the department may, in the manner provided by law,
20 maintain an action in the name of the state for injunction
21 or other process against any person or governmental unit to
22 restrain or prevent the establishment, conduct, management, or
23 operation of an ambulatory surgical center without a license.

24 Sec. 14. **WORKGROUP ESTABLISHED — RULES.** The department
25 of public health shall convene a workgroup with stakeholders
26 and a designated intermediary to determine which fields of
27 information will be utilized in the data reporting requirement
28 pursuant to chapter 135P as enacted in this Act. Any rules
29 adopted by the department of public health regarding the
30 data reporting requirements pursuant to section 135P.7, as
31 enacted in this Act, shall reflect the recommendations of the
32 workgroup.

33 Sec. 15. **EFFECTIVE DATE.** This Act takes effect July 1,
34 2013.

35

EXPLANATION

1 This bill relates to ambulatory surgical centers. The
2 bill defines "ambulatory surgical center" as a facility which
3 primarily provides surgical outpatient procedures that are not
4 ordinarily performed in a private physician's office but do
5 not require 24-hour hospitalization. The bill provides that
6 an "ambulatory surgical center" includes a facility that is
7 certified or is seeking certification as an ambulatory surgical
8 center under the federal Medicare program or under the medical
9 assistance program established pursuant to Code chapter 249A,
10 but does not include a facility operated by a person licensed
11 to practice dentistry.

12 The bill states the purpose of new Code chapter 135P is
13 to protect public health, safety, and welfare by providing
14 basic standards for operating, constructing, and maintaining
15 an ambulatory surgical center.

16 The bill requires that any person or governmental unit
17 acting separately or together that establishes, conducts, or
18 maintains an ambulatory surgical center must have a license as
19 provided under the Code chapter. The person or governmental
20 unit shall obtain a license from the department of inspections
21 and appeals (DIA). The application shall include information
22 that the DIA may reasonably require including affirmative
23 evidence of compliance with new Code chapter 135P, other
24 statutes, and rules. An application must be accompanied by the
25 required initial license fee of \$500. An annual license fee is
26 also \$500. The license fees are to be credited to the state's
27 general fund. The bill also provides that the DIA shall issue
28 a license upon receiving an application if the applicant
29 and the ambulatory surgical center comply with Code chapter
30 135P and the rules of the department. A licensee receives
31 reapproval upon payment of the \$500 license fee and filing
32 an application form available from the DIA. Licenses are
33 general or restricted in form. A license will be issued only
34 for a premises and persons or governmental units named in the
35 application and the license is not transferable or assignable

1 without written approval of the DIA. The bill requires that
2 a license be posted in a conspicuous place on the licensed
3 premises as prescribed by department rules.

4 The bill states that the DIA may deny, suspend, or revoke a
5 license when it finds the licensee or applicant substantially
6 failed to comply with Code chapter 135P or rules or minimum
7 standards adopted pursuant to the Code chapter. The bill
8 states that the DIA rules will govern the procedure for notice
9 and hearing to deny an application for a license or to revoke
10 or suspend a license. The bill states a full and complete
11 record of the proceedings shall be kept, but the record does
12 not need to be transcribed unless judicial review is sought. A
13 transcript of the proceeding may be obtained by an interested
14 party on payment of the cost of preparing the copy or copies.

15 The bill provides that the DIA shall adopt rules setting
16 the standards for an ambulatory surgical center to be licensed
17 under the Code chapter. The rules must be consistent with
18 and cannot exceed the requirements of Code chapter 135P or
19 the federal requirements for coverage in the federal Medicare
20 program for ambulatory surgical centers under 42 C.F.R.
21 pt. 416. The DIA must also establish, by rule, the notice
22 and hearing procedure if a license is denied, revoked, or
23 suspended. The DIA must also enforce the rules. The rules
24 established by the DIA shall require ambulatory surgical
25 centers to report ambulatory data to the department of public
26 health or the designated intermediary for purposes of public
27 health dissemination of health data. The bill states that
28 an ambulatory surgical center in operation at the time of
29 promulgation of applicable rules or standards under Code
30 chapter 135P shall be given a reasonable time, not to exceed
31 one year, to comply with the rules and minimum standards.

32 The bill provides for inspections of ambulatory surgical
33 centers. The bill requires the DIA to make, or cause to be
34 made, inspections or complaint investigations as the DIA deems
35 necessary to determine compliance with Code chapter 135P and

1 the applicable rules. The DIA must recognize the comparable
2 inspection and findings of a Medicare conditions for coverage
3 survey in lieu of the DIA's own licensure inspection.

4 The DIA inspectors must not participate in an inspection or
5 complaint investigation of an ambulatory surgical center if the
6 inspector or a member of the inspector's immediate family works
7 or has worked at the ambulatory surgical center within the last
8 two years. A DIA inspector also must not participate in an
9 inspection or complaint investigation of an ambulatory surgical
10 center in which the inspector or the inspector's immediate
11 family has a financial or ownership interest.

12 The bill provides that an ambulatory surgical center shall
13 comply with abuse and criminal background checks in the same
14 manner as provided in Code section 135B.34. The bill also
15 states that a licensed ambulatory surgical center is allowed to
16 access the single contact repository as is necessary to perform
17 record checks of employees or potential employees.

18 The bill provides for the confidentiality of the DIA records
19 of ambulatory surgical centers. The bill states that the DIA's
20 final inspection or investigation findings, or survey findings
21 of an accredited body authorized by the DIA rules, regarding
22 an ambulatory surgical center's compliance with requirements
23 for licensing or accreditation must be made available to the
24 public in a readily available form and place. The bill states
25 that other information acquired by the DIA relating to an
26 ambulatory surgical center shall not be made available to the
27 public except in proceedings involving denial, suspension,
28 or revocation of a license. The bill also provides that the
29 name of a person who files a complaint with the DIA shall
30 remain confidential regardless of means of legal compulsion
31 for its release, other than the release of the name to the DIA
32 employees or agents involved in investigating a complaint.

33 The bill provides that judicial review may be sought
34 pursuant to Code chapter 17A, but petitions for judicial review
35 may be filed in the district court of the county in which the

1 ambulatory surgical center is located or is to be located,
2 notwithstanding the terms of Code chapter 17A. The bill
3 provides that the status quo of the petitioner or licensee is
4 preserved pending final disposition in court.

5 The bill establishes a penalty for any person establishing,
6 conducting, managing, or operating an ambulatory surgical
7 center without a license. The person is guilty of a serious
8 misdemeanor and each day of the continuing violation after a
9 conviction is a separate offense.

10 The bill provides that the DIA may maintain an action in
11 the name of the state for an injunction or other process
12 against a person or governmental unit to restrain or prevent
13 the establishment, conduct, management, or operation of an
14 unlicensed ambulatory surgical center.

15 The bill establishes a workgroup to recommend which
16 fields of information will be utilized for the data reporting
17 requirement provided in Code chapter 135P. The department of
18 public health shall convene the workgroup with stakeholders
19 and a designated intermediary. The bill requires that any
20 rules adopted by the department of public health regarding
21 the data reporting requirement shall reflect the workgroup's
22 recommendations.

23 The bill provides that the Act takes effect July 1, 2013.